
Finance Committee

HB 1470

Brief Description: Providing incentives for the use of open source instructional materials in higher education.

Sponsors: Representatives Young, Lovick, Slatter, Sells, Goodman, Kraft, Van Werven, Gildon, McCaslin, Bergquist, Doglio and Kloba.

Brief Summary of Bill

- Provides a business and occupation tax and public utility tax credit to eligible taxpayers that create or publish open source instructional material.

Hearing Date: 2/25/19

Staff: Richelle Geiger (786-7139).

Background:

Business and Occupation Tax.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

Public Utility Tax.

The gross income derived from the operation of publicly and privately owned utilities is subject to the public utility tax (PUT). The tax is imposed in lieu of B&O tax and is applied only on sales to consumers. Other income of the utility, such as retail sale of tangible personal property,

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is subject to the B&O tax. There are six different PUT rates, depending on the specific utility activity. The rates are:

- 3.852 percent on telegraph companies, distribution of natural gas, and the collection of sewage;
- 3.8734 percent on the generation or distribution of electrical power;
- 0.642 percent on urban transportation and watercraft vessels under 65 feet in length;
- 1.926 percent on motor transportation, railroads, railroad car companies, and all other public service businesses;
- 5.029 percent on the distribution of water; and
- 1.3696 percent on log transportation.

Tax Preferences.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Bill:

A taxpayer that publishes or creates open source instructional materials to be used by students attending private or public higher education institutions in Washington are eligible for a B&O tax or PUT credit if the open source materials:

- are provided at no cost to the institution and students;
- is officially adopted as the primary resource for the course by the instructor; and
- are used in lieu of materials that the students would be required to purchase.

"Open source instructional material or materials" are textbooks, manuals, and other similar education readings, in digital form, that are required or essential to the course of study offered at a private or public institution of higher learning.

The bill does not authorize any use of instructional materials that would constitute an infringement of copyright laws.

By October 31 of every year, private and public institutions are required to submit the following information to the Department of Revenue (DOR):

- the taxpayers' name, address, and unified business identifier;
- certified value of the open source instructional material provided by the taxpayer; and
- any other information the DOR requires to implement the tax credit.

The certified value of the open source instructional material is calculated by multiplying the total number of students who registered and paid for any course of study in which open source instructional materials were adopted for the academic year, by the cost of the instructional materials that the open source instructional materials replaced. The cost of the instructional

material replaced by the open source instructional material is estimated based on the cost of the material used by the private or public institution during the previous academic year for the same course of study. If the course of study was not offered during the previous academic year, the cost of the instructional material replaced by the open source instructional material is estimated based on the cost of the material used by another private or public institution during the previous academic year for the same course of study.

The B&O tax and PUT credits are equal to fifty percent of the certified value of the open source instructional material. The total amount of credit that a taxpayer can claim annually is \$35,000. Taxpayers may carry unused credits forward for two consecutive calendar years immediately following the year in which the credit was earned. Credits are available on a first-in-time basis. The DOR must keep a running total of all awarded B&O tax & PUT credits annually. The total amount of credits awarded annually statewide cannot exceed \$1,500,000.

To claim the credit, the taxpayer must file their taxes electronically and keep records necessary for the DOR to determine eligibility for the tax credit including records from the higher education institution that adopted the use of the taxpayer's open source materials provided at no cost to the institution.

The bill contains a tax preference performance statement. The legislature specific public policy objective is to reduce educational costs for students of higher education institutions. The Joint Legislative Audit and Review Committee (JLARC) is directed to evaluate the total number of businesses that benefited from the tax credit, including the total annual revenue impact and the average credit amount claimed; the number of private and public institutions of higher education that are using open source instructional materials; the number of courses using open source instructional material as the main resource for students and the number of students in those courses. The JLARC may request data from private and public institutions to complete the evaluation. The JLARC must complete the evaluation by December 31, 2028, and report the findings to the fiscal committees of the legislature during the 2029 legislative session.

The act may be known as "The Textbook Affordability via Open Sourcing Act."

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.